

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: ECONOMIC DEVELOPMENT

AGENDA DATE: FEBRUARY 15, 2005

CONTACT PERSON/PHONE: DAVID DOBSON, DIRECTOR, 533-4284

DISTRICT(S) AFFECTED: ALL

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Authorize the Mayor to sign the Agreement between the City and PDNG Foundation providing for the development by Paso del Norte Group of a Downtown Master Plan and the contribution by the City of an amount not to exceed \$250,000.00 to offset a portion of the costs of the development of the Plan, and that the Mayor be authorize to sign any related documents which might be necessary to accomplish such purpose

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On December 14, 2004, City Council adopted a Resolution appointing the City Manager "to negotiate with the appropriate parties to allow the City to fund and participate in the Paso del Norte's Master Plan". An Agreement has been negotiated with PDNG's affiliate, PDNG Foundation, to provide the terms under which PDNG will develop the Downtown Master Plan and the City will contribute to offset a portion of the costs of such Plan and monitor PDNG's performance in development of the Plan

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

None

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Funds for this item have been budgeted under Outside Contracts in Economic Development FY05

Budget.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

WHEREAS, new development in Downtown El Paso will serve to boost the tax base of the City directly and indirectly, and ultimately assist in relieving the tax burden of all citizens; and

WHEREAS, the Paso del Norte Group (PDNG) has engaged world-class planners to develop the Downtown Master Plan as an effective road map for successful Downtown revitalization; and

WHEREAS, on December 14, 2004, City Council adopted a Resolution appointing the City Manager "to negotiate with the appropriate parties to allow the City to fund and participate in the Paso del Norte's Master Plan"; and

WHEREAS, an Agreement has been negotiated with PDNG's affiliate, PDNG Foundation, to provide the terms under which PDNG will develop the Downtown Master Plan and the City will contribute to offset a portion of the costs of such Plan and monitor PDNG's performance in development of the Plan;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Mayor be authorized to sign the Agreement between the City and PDNG Foundation providing for the development by Paso del Norte Group of a Downtown Master Plan and the contribution by the City of an amount not to exceed \$250,000.00 to offset a portion of the costs of the development of the Plan, and that the Mayor be authorized to sign any related documents which might be necessary to accomplish such purpose.

ADOPTED this 15th day of February, 2005.

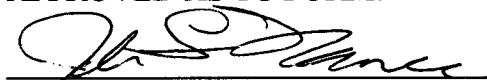
CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



John F. Nance
Assistant City Attorney

STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

THIS Agreement is entered into by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "City", and **PDNG FOUNDATION**, a non-profit corporation organized under the laws of the State of Texas and pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, hereinafter referred to as "Contractor."

WITNESSETH:

WHEREAS, Contractor desires to develop a Master Plan for the Downtown area; and

WHEREAS, Contractor agrees to provide, or to contract for the provision of, services in accordance with the Scope of Services described herein for the development of the Master Plan; and

WHEREAS, the City desires to participate in the development of such a Master Plan, to be included in the gathering of information and the evaluation of progress of the Plan, and to contribute an amount not to exceed \$250,000.00 to offset a portion of the costs of developing the Plan;

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES

Contractor agrees that it shall develop a Master Plan for the Downtown area of El Paso in accordance with Exhibit "A," the Scope of Services, a copy of which is attached hereto and incorporated herein for all purposes.

2. DURATION

The term of this Agreement shall begin February 15, 2005, and end on September 30, 2005.

3. CONSIDERATION

In consideration of Contractor's performance of the services described above, the City agrees to pay, and Contractor agrees to accept, payment not to exceed \$250,000.00 to offset a portion of the costs of development of the Master Plan for Downtown. Payment for the services hereunder shall be made by the City in two (2) installments of Eighty Thousand Dollars (\$80,000) each, the first such installment payable within thirty (30) days following the date of execution of this Agreement and the second installment payable as of May 31, 2005. The final payment of Ninety

Thousand Dollars (\$90,000.00) shall be made to Contractor within thirty (30) days following presentation to City Council of the Master Plan.

4. PERSONNEL AND FACILITIES

Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement and that such personnel shall not be employees of or have any contractual relationship with the City.

Contractor shall provide such office space, equipment, supplies and other materials as may be necessary to accomplish the services outlined herein.

5. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by and between the parties that Contractor is hired and engaged as an independent contractor and is not an officer, agent or employee of the City.

6. PERFORMANCE

The City shall have the right to monitor performance of Contractor's services hereunder on a periodic basis to assure compliance with the provisions of this Agreement. The Contractor will provide assistance and information needed by the City in monitoring and evaluating the performance of the Contractor in all areas of accountability.

7. TERMINATION

Either party may terminate this Agreement, with cause, upon 30 days' notice to the other party.

8. NOTICES

All notices, communications and reports under this Agreement shall be either hand-delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: Joe Wardy, Mayor
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

CONTRACTOR: Myrna J. Deckert, Chief Operating Officer
The El Paso del Norte Group
201 East Main, Suite 1700
El Paso, Texas 79901

9. INDEMNIFICATION

The City shall not be subject to any obligations or liabilities of Contractor incurred in the performance of this Agreement. Contractor expressly agrees to indemnify and hold harmless the City from any and all liabilities and obligations incurred due to its negligent acts or any omission to act, any actions outside its scope of authority under this Agreement, or any breach of contract.

10. LIABILITY INSURANCE

Contractor shall file a Certificate of Liability Insurance that is satisfactory to the City from an insurance company licensed to do business in Texas, which refers to this Agreement by date, certifying that such insurance coverage is in effect and naming Contractor as the insured and the City of El Paso as an additional insured. Minimum coverage provided by such policy shall be \$250,000 for each person and \$500,000 for each occurrence for bodily injury or death and \$100,000 per occurrence for damage to property. Such policy shall contain a provision that it shall not be canceled without notice to the City of El Paso.

11. REGULATIONS

Both parties hereto agree and recognize that laws, rules and regulations related to this Agreement and performance by either party are subject to change. As such, both parties specifically agree that any of the provisions in this Agreement may be changed to bring the services provided hereunder into compliance with such laws, rules, and regulations. Notice of such change will be given to the other party as soon as notice is received by either party of the changes in applicable laws, rules, and regulations; however, any such changes which must take effect to bring the services provided hereunder into compliance with such changes will take effect as soon as is needed to comply with such changes in the laws, rules, and regulations.

12. COVENANTS BY THE CONTRACTOR

A. NO ASSIGNMENT

Contractor shall not assign, delegate, or attempt to so convey an interest in this Agreement. In the event Contractor does attempt to so convey an interest in this Agreement, said Agreement shall be terminable, at the discretion of the City, without notice to Contractor.

B. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable federal, state and local law including all City ordinances, codes and regulations. In particular, Contractor must file the Assurance

required under the City's ordinance to prohibit discrimination against disabled persons. Failure to do so in any manner that materially impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a material breach of this Agreement.

C. PROHIBITED ACTS

(1) Conflict of Interest: Contractor covenants that it has had no interest in, and shall not acquire any interest, direct or indirect, in any contract or subcontract which will conflict in any manner or degree with the performance of the services performed under this Agreement. Any violation of this paragraph, with knowledge express or implied, by the Contractor shall render this Agreement voidable by the Mayor of the City of El Paso or by the El Paso City Council and shall entitle the City to appropriate reimbursement.

(2) Discrimination: Contractor covenants that no person in the United States has been or will be, on the grounds of race, creed, color, national origin or sex, excluded from participation in, denied the benefits of, or subject to discrimination under, any program or activity funded in whole or in part with funds made available to Contractor pursuant to the terms of this Agreement.

(3) Discriminatory Criteria: Contractor may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, creed, color, sex or national origin, or of defeating or substantially impairing accomplishment of the objects of programs funded pursuant to this contract with respect to individuals of a particular race, color, national origin, creed or sex.

D. NON-RELIGIOUS ACTIVITIES

Contractor will provide the stated services in a manner that is exclusively non-religious in nature and scope. There will be no religious services, proselytizing, instruction, or any other religious influences in connection with the stated services.

E. ACCESSIBILITY STANDARDS:

Contractor must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner that impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder shall constitute a breach of this Agreement. Contractor will comply with any federal law that applies to grantees of the City.

F. SUBCONTRACTORS

The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them.

13. ENTIRE AGREEMENT

This Agreement constitutes and expresses the entire agreement of the parties hereto in reference to the services of the Contractor for the City, all promises, representations, and understandings relative hereto being herein merged.

IN WITNESS WHEREOF, the Parties have executed this Agreement in the City of El Paso on the 15th day of February, 2005.

CITY OF EL PASO

ATTEST:

Joe Wardy
Mayor

Richarda Duffy Momsen
City Clerk

PDNG FOUNDATION

By: _____
Name Printed: _____
Title: _____

APPROVED AS TO FORM:

John F. Nance
Assistant City Attorney

APPROVED AS TO CONTENT:

David G. Dobson, Director
Economic Development Department

EXHIBIT "A"

SCOPE OF SERVICES

A. PDNG Foundation, as Contractor under the foregoing Agreement, agrees to provide the following services in development of the Master Plan for Downtown El Paso:

1. Review of current best practice models (nationally and internationally) for central-city revitalization successes and a summary/presentation of those models and specific elements.
2. Review of all recent Downtown plans for El Paso, assessment of what was implemented, what worked and what did not. Assessment of remaining recommendations in terms of viability.
3. Analysis and identification of economic drivers for El Paso Downtown, including the projects approved by the participating taxing entities in TIF District No. 1 at the time of its dissolution, to determine their real potential and viability as "economic catalysts" for change and reinvestment.
4. Recommendations for land use options for defined Downtown area and adjacent areas, including (a) potential reuse of existing buildings; (b) new development and soft sites; (c) new office/retail/residential development opportunities, and (d) potential civic, industrial, entertainment and hospitality development.
5. Factors of influence in nearby, adjacent neighborhoods (positive and negative).
6. Recommendations on structures and organizational models to lead Downtown redevelopment efforts, role of public sector, role of private sector, tools and incentives needed to catalyze initial activities.

B. City officials will be involved in various stages of the input and evaluation process as participants. PDNG Foundation and its consultant will update designated City officials periodically on status of the Project and timeframe for initial draft and recommendations. Formal briefing with Mayor and members of City Council and with City staff will be conducted prior to release of final recommendations.